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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/487,944	01/19/2000	Ronald J. Shannon	CV0283a	3760

7590 12/18/2002

Bristol-Myers Squibb Company
100 Headquarters Park Drive
Skillman, NJ 08558

EXAMINER

ALVAREZ; RAQUEL

ART UNIT	PAPER NUMBER
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3622

DATE MAILED: 12/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/487,944

Applicant(s)

SHANNON, RONALD J.

Examiner

Raquel Alvarez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/16/02.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 13-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 13-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

1. This office action is in response to communication filed on 10/16/2002. Claims 11-12 were canceled. Claims 13-15 were added. Claims 1-10 and 13-15 are presented for examination.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-10 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brill et al. (5,299,121 hereinafter Brill) in view of article titled, "Solutions, Wound Care Algorithm Series flip cards" hereinafter Solutions.

With respect to claims 1, 3-6, 8-10, Brill teaches a method for identifying a symptom care protocol for a given symptom (see figures 1-4). Classifying the symptom against a defined scale for a first symptom factor to obtain a symptom classification (i.e. classifying the symptoms to obtain the kind of illness)(Figures 1-2C); grading the symptom factors against defined scale (i.e. the level of the symptoms are accessed to determine the type of illness (Figure 2A-2E); a visual decision device corresponding to the symptom classification wherein the visual decision device identifies at least one component of a treatment protocol for the graded symptom factors (col. 3, lines 32-, col. 4, lines 1-68).

Brill does not specifically teach that the symptoms being rated and classified are wounds. On the other hand, Solutions teaches a method of use in identifying and carrying for various wounds. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included in the system of Brill one of the symptoms to be wounds because such a modification would include wound properties and the ability to promote the wound healing process.

With respect to claim 2, the claim further recite a mechanical device for presenting the visual decision and for classifying the wound, such as sliding cards. The combination of Brill and Solutions teach computerized and manual decisions techniques used for presenting and classifying wounds. Manual like Mechanical devices are old and well known to be in use prior to the computer era. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included mechanical devices and sliding cards because such a modification would allow non-computer users to benefit from the use of the system.

Claim 7 further recites an interactive scoring sheet containing a marker associated with one or more of the scores for two or more wound factors identifying an addition to the treatment protocol. The combination of Brill and Solutions teach leveling the wound factors and identifying various treatment protocols and since it is old and well known in the computer related arts to provide interactive displays then it would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included a scoring sheet containing a marker for identifying an addition to the

treatment protocol because such a modification would allow for a more permanent display such as a scoring sheet marking or showing the additional treatments.

Claims 13-15 further recites a sleeve in which the card slides having at least two openings, the second opening alignable with the second opening. Official notice is taken that a card in which a first and a second openings are alignable in order to match the corresponding information is old and well known. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included modifying the combination of Brill and Solutions with a sleeve in which the card slides having at least two openings, the second opening alignable with the second opening in order to obtain the above mentioned advantage.

Response to Arguments

3. Applicant's arguments filed 10/16/2002 have been fully considered but they are not persuasive.

a. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

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b. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Brill is a system and method to assist the customer with the selection of an appropriate medication to relieve symptoms of an illness, **injury** or the like. A wound is an **injury** to one's body as from a violence, accident or surgery and therefore it would have been obvious in the system and method of Brill to include classifying the wounds of Solutions because such a modification would allow in the system of Brill to include as one of the injury a wound in order to provide wound properties and the ability to promote the wound healing process.

Conclusion

4. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Points Of Contact

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raquel Alvarez whose telephone number is (703)305-0456. The examiner can normally be reached on 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric w Stamber can be reached on (703)305-8469. The fax phone numbers for the organization where this application or proceeding is assigned are (703)746-7239 for regular communications and (703)746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-3900.



STEPHEN GRAVINI
PRIMARY EXAMINER

R.A.
12/15/02